

2011-CI-07091

2011CI07091 -P00001

045TH JUDICIAL DISTRICT COURT

ABIMELCH GARCIA VS CITY OF SAN ANTONIO

No. DATE FILED: 04/29/2011

*Joe PPS*  
ABIMELCH GARCIA

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IN THE DISTRICT COURT

VS.

JUDICIAL DISTRICT

CITY OF SAN ANTONIO

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

*CRT  
PROCESS DEPT*  
TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES ABIMELCH GARCIA, PLAINTIFF, complaining of CITY OF SAN ANTONIO, hereinafter called DEFENDANT, and for cause of action would respectfully show the Court the following:

I.

Pursuant to Rule 190.1 of Texas Rules of Civil Procedure, discovery is intended to be conducted under Level 2.

II.

Plaintiff, ABIMELCH GARCIA, is a resident of San Antonio, Bexar County, Texas.

*CRT  
PROCESS DEPT*  
Defendant, CITY OF SAN ANTONIO, is an incorporated city in the State of Texas, and may be served with citation by serving its City Clerk, Leticia Vacek, at 100 Military Plaza, Second Floor, San Antonio, Texas 78205.

III.

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DEPUTY  
*Joe PPS*

Venue is proper pursuant to Section 15.002 of the Texas Civil Practice and Remedies Code. This action is brought under Chapter 101, Texas Tort Claims Act, Civil Practice and Remedies Code. Notice under CPRC Section 101.101 has been previously provided to City of San Antonio.

IV.

On or about February 15, 2010, Plaintiff ABIMELCH GARCIA, was operating his wheelchair in a careful manner, at the intersection of E. Commerce and Soledad, in San Antonio, Texas, when he was suddenly and violently struck by a City of San Antonio Waste Management truck, operated by Gabriel Santos Mendoza, an employee of Defendant City of San Antonio. As a result thereof, Plaintiff was caused to suffer serious and permanent bodily injuries, including loss of both legs, and damages described hereinafter with more particularity.

V.

Defendant is liable for proximately causing the injuries and damages of Plaintiff in that Defendant:

1. failed to keep such an outlook as a person of ordinary care would have kept;
2. failed to turn Defendant's motor vehicle to the right to avoid collision as a person using ordinary care would have done;
3. failed to turn Defendant's motor vehicle to the left to avoid the collision as a person using ordinary care would have done;
4. failed to make timely or proper application of the brakes on Defendant's motor vehicle as a person using ordinary care would have done;
5. failed to yield the right of way to a pedestrian crossing a roadway in a crosswalk, in violation of Section 552.003, Texas Transportation Code.

6. failed to exercise due care to avoid colliding with a pedestrian, in violation of Section 552.008, Texas Transportation Code.

VI.

Each of the foregoing acts or omissions, singularly or in combination, was the proximate cause of the injuries and damages of Plaintiff described below.

VII.

Plaintiff, as a proximate and producing result of the collision and the above acts or omissions of Defendant, incurred the following damages:

1. reasonable and necessary medical expenses in the past;
2. reasonable and necessary medical expenses which, in all reasonable probability, will be incurred in the future;
3. physical pain suffered in the past;
4. physical pain which, in all reasonable probability, will be incurred in the future;
5. mental anguish in the past;
6. mental anguish which, in all reasonable probability, will be incurred in the future.
7. physical impairment in the past; and,
8. physical impairment which, in all reasonable probability, will be incurred in the future.

VIII.

Plaintiff, because of all of the above, has sustained and will sustain injuries and damages in an amount within the jurisdictional limits of this Court.

X.

Plaintiff is entitled to pre-judgment interest and post-judgment interest at the maximum rate allowed by law.

**REQUEST FOR DISCLOSURE**

Pursuant to TRCP 194, you are requested to disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 (a)-(l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer herein; that, on final hearing of this cause, Plaintiff has judgment against Defendant for actual damages within the jurisdictional limits of this Court; pre-judgment interest and post-judgment interest at the maximum rate provided by law; court costs; and any other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

*JAVIER PADILLA*  
C.R.T.  
PROCESS-DEPT

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JAVIER PADILLA  
State Bar No. 15406100  
2611 San Pedro  
San Antonio, Texas 78212  
Telephone: 210.299.8141  
Telefacsimile: 210.212.6933

ATTORNEY FOR ABIMELCH GARCIA,  
PLAINTIFF

PLAINTIFF HEREBY RESPECTFULLY REQUESTS A JURY TRIAL.

2011-CI-07091

ABIMELCH GARCIA

V.

CITY OF SAN ANTONIO

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§C.R.T  
MP

IN THE DISTRICT COURT

45TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**DEFENDANT, CITY OF SAN ANTONIO'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF THE COURT:

Now comes CITY OF SAN ANTONIO, Defendant in the above styled and numbered cause, and reserving the right to file other and further pleadings, exceptions and denials, files this its Original Answer to Plaintiff's pleadings heretofore filed and would respectfully show the Court the following, to-wit:

## I.

Defendant, CITY OF SAN ANTONIO, says that the allegations contained in Plaintiff's pleadings are generally untrue and this Defendant demands its legal prerogative of requiring the Plaintiff to prove each and every allegation, if he can.

## II.

Defendant, CITY OF SAN ANTONIO, says that it is a home-rule municipality pursuant to its City Charter and the laws of the State of Texas.

## III.

Defendant, CITY OF SAN ANTONIO, specifically pleads governmental immunity to all causes of action alleged by Plaintiff in his pleadings.

DISTRICT CLERK  
 BEXAR CO. TEXAS  
 BY *A. Garcia* -5 AM 11:08  
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IV.

Defendant, CITY OF SAN ANTONIO, pleads the governmental defenses and immunities to which it is entitled pursuant to Chapter 101 et. seq. of the Tex. Civ. Prac. & Rem. Code, also known as the Texas Tort Claims Act.

V.

Further pleadings, Defendant, CITY OF SAN ANTONIO, says that in the unlikely event it should be found liable to Plaintiff, which liability Defendant specifically denies, then such liability is limited to the maximum amount provided for in Tex. Civ. Prac. & Rem. Code, Section 101.023(c).

VI.

Further pleading, Defendant, City of San Antonio, says that at the time of the accident in question and immediately prior thereto, Plaintiff Abimelch Garcia, was guilty of various acts and/or omissions of negligence each and all of which were a proximate cause of the accident in question and Plaintiff's injuries and damages.

VII.

The Defendant demands a jury trial.

Wherefore, Premises Considered, Defendant, CITY OF SAN ANTONIO, prays that Plaintiff take nothing by his lawsuit against it and that Defendant, CITY OF SAN ANTONIO, go hence without day.

Respectfully submitted,

CITY OF SAN ANTONIO  
Michael D. Bernard, City Attorney  
SBN: 02211310  
Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Floor

San Antonio, TX 78205

*Kenneth L. Clark, Jr.*  
KENNETH L. CLARK, SR.  
Deputy City Attorney, Litigation  
SBN: TX04289000  
Phone No.: (210) 207-8975  
Fax No.: (210) 207-4357

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument has been sent to the following interested person(s), May 5, 2011:

Javier Padilla  
2611 San Pedro  
San Antonio, Texas 78212

CMRRR  
 Hand Delivery  
 Fax

*KENNETH L. CLARK, SR.*  
KENNETH L. CLARK, SR.